



HIPAA Privacy

*Information sharing (or not) among....
programs, divisions, and agencies*



Key Issues

- Single vs. Hybrid Entity
 - Sharing internally and externally
- Implications for Tracking Disclosures
- Public Health
 - Use and disclosure as public benefits, public health or oversight agency
- Minimum Necessary Implications



Part I

- Entity Status
 - Sharing internally and externally
- Tracking Disclosures



Hybrid Entity Status

- Agencies that have multiple functions can choose to designate the agency as a “Hybrid Entity”.
- Hybrid Entity is a single legal entity that is a covered entity and whose covered functions are not its primary functions.
 - Proposed Change: Hybrid entity is a single legal entity whose business activities include both covered and non-covered functions...
- Under Either version, multi-function agencies can utilize hybrid status.



Health Care Component

- Health Care Component Covered Entity
 - Health Plan
 - Health Care Provider
 - Health Care Clearinghouse
 - Perform the functions of a health care plan, health care provider and health care clearinghouse



Health Care Components

- Must designate “health care components”
 - Hybrid entity must ensure health care component complies with requirements
 - Privacy requirements apply only to health care components
 - Hybrid must ensure no uses or disclosures between health care component and other parts except as allowed under privacy
 - Workforce members with duties to multiple components have special requirements




Entity Status

Pros

- Limited Application
- Targeted Training

■ Cons

- Internal system firewalls and/or safeguards between programs
- Information shared outside health care component may be limited or prohibited and disclosure must be tracked
- Only certain staff have access to information
- Clients may view inconsistent treatment and more forms as problematic



Overall Status - Decide and Document

- Determine application of privacy
 - Health care component or all of Entity
- Document Decision factors and Application
- Communicate to Stakeholders
 - Staff, Clients, Trading partners
- Retain Documentation in accordance with rule



Information Disclosure Tracking

- Individuals have a right to Accounting Entity must Track Disclosures. 164.528
- Exceptions include Disclosures for:
 - treatment, payment, and health care operations
 - To the individual or Facility Directory and persons involved in care
 - National Security or Intelligence
 - Inmate PHI to Correctional Facility or Law Enforcement having custody (conditions apply)
 - Disclosures prior to compliance date
- Potential Change: Would add disclosures authorized by individuals to exception



Disclosure Tracking

- Disclosures required by law, for public health, or oversight must be tracked
- Public Health and Social Services
 - Hybrid Entity Status increase “disclosures” because sharing outside the health care component is a “disclosure”.
 - Disclosures to “sister agencies” subject to tracking



Disclosure Tracking

- The frequency, periodicity, or number of the disclosures made during the accounting period.
- The date of the last such disclosure during the accounting period.
- Includes disclosures to or by business associates.



Part II – Disclosure Authority and Minimum Necessary

- General Rules on Disclosure
- Public Benefits Program Disclosures
- Health and Health Oversight Disclosures
- Minimum Necessary Restrictions



General Use and Disclosure

Covered Entities may use and disclose information for its own treatment, payment, and health care operations.

- Treatment: provision and coordination of care and services by providers(or provider and 3rd party)
- Payment: activities to obtain premiums or determine responsibility for coverage or benefits, to obtain or provide reimbursement for care, risk adjusting, billing claims management, collection, review of services, utilization review
- Health care operations: quality assessment and improvement; underwriting; medical review, legal services, audit; business planning and development; management activities; customer service; grievance



Multi-Function Uses and Disclosures

- A covered entity that performs multiple covered functions that would make the entity any combination of a plan, provider, or clearinghouse must:
 - Comply with the standards as applicable to each type of entity for that entities' functions performed, and
 - Use or disclose PHI of individuals who receive the covered entities plan or provider services, but not both, only for the purposes related to the function being performed. 164.504(g)



Public Health Authority and Health Oversight Agency

- Public Health Authority is: a Government agency or entity acting on behalf of public agency that is responsible for public health matters as part of its official mandate.
- Health Oversight Agency is: a Government agency or entity acting on behalf of a public agency that is authorized to oversee the health care system (public or private) or government programs in which health information is necessary to determine eligibility or compliance or to enforce civil rights laws.



Public Benefits Program

- Public Benefits Program is: a health plan that is a government program providing public benefits. 164.512(k)(6)
- Information Sharing:
 - may share or maintain in single data system information
 - relating to eligibility and enrollment
 - with another agency providing public benefits
 - where required or expressly authorized by law, or
 - Where both are covered and programs serve similar populations and necessary to coordinate functions or improve admin. and management



Public Health Authority Information Disclosure/Use

- If the covered entity is also a public health authority, the covered entity is permitted to use PHI in all cases in which it is permitted to disclose such information for public health activities. 164.512(b)(2)
 - Use of PHI for child and elder abuse investigation
 - Disease, injury, or disability prevention
 - Vital Statistics
 - FDA approval and adverse effects reporting
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Health Oversight Information Use

- Covered entity may disclose PHI to a health oversight entity for oversight activities authorized by law, (and is permitted to use PHI for oversight if covered entity is also a health oversight agency), including:
 - Audits, Inspections,
 - Civil, administrative, criminal investigation
 - Licensure or disciplinary actions
 - Other activities necessary to oversight of health care system; government benefits programs for which health information is relevant to eligibility;
 - 164.512(d)



Public Programs

- Implications for government entities that are covered entities and public health or health oversight agencies
 - Use of information for multiple purposes
 - Disclosing of information for purposes other than which it was received for
 - Tracking of information use and disclosure
 - Hybrid or Single Entity



Minimum Necessary

- Entities are required to disclose only minimum necessary to accomplish task
- Changes to practices and impacts
 - Use and Disclosure of data for purpose other than original collection
 - First, is it allowed, must authorization be obtained
 - Second, what is necessary to share
 - Are protocols in place
 - Other Restrictions (accounting, limitations, etc.)



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Discussion

Questions and Comments